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Tracie K. Lindeman
Clerk of Supreme Court

9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10 THE STATE OF NEVADA,)

11 Petitioner,)

Case No. 58833

12 vs.)

13 LACY THOMAS,)

14 Respondent.)
15
16

17 **ADDENDUM TO NOTICE OF SUPPLEMENTAL AUTHORITIES**
18 **AND RESPONSE TO MOTION TO STRIKE NOTICE**

19 Appellant moves to strike the Notice of Supplemental Authorities on the
20 ground that Respondent failed to reference the pages in the brief supplemented by
21 the Notice. The supplemental citations provide the appropriate standard of review
22 to be applied to the issue raised in the State’s Opening Brief at page 7. The State
23 did not set forth the standard of review to be applied to the issue when it was not
24 raised below. Respondent’s Answering Brief at pages 5-6 set forth the standard of
25 review as “plain error” when the issue was not raised below. Pages 6-7 of the
26 Answering Brief set forth the argument as to the appropriate standard of review.
27 At page 6 of the Appellant’s Reply Brief, the State asserts, “Thomas attempts to
28 escape the logical application of the rules of statutory construction by complaining

1 that any error was waived by the State's failure to proffer the specific argument
2 below." The supplemental authorities provide case law support for the waiver
3 argument and provide the correct standard of review to be applied when a party
4 has affirmatively invited the lower court to rule on the matter and then argues on
5 appeal that the matter is time-barred.

6 The State suggests that the Notice was filed in bad faith and therefore
7 should be stricken. This court should not be expected to decide an issue of such
8 importance under an erroneous standard of review.

9 Counsel apologizes to the court and Appellant's counsel for filing the
10 Notice five days before oral argument. The Notice was actually transmitted to the
11 court on December 31, 2012 but was not accepted for filing until January 2, 2013
12 due to the holiday. Because the standard of review is essential to the court's
13 resolution of the issue, the court should be apprised of the authority which is
14 applicable to the procedural history in this appeal.

15 Dated this 3rd day of January, 2013.

16 DANIEL J. ALBREGTS, LTD.
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1 CERTIFICATE OF SERVICE

2 I hereby certify and affirm that this document was filed electronically with
3 the Nevada Supreme Court on January 3, 2013. Electronic Service of the
4 foregoing document shall be made in accordance with the Master Service List as
5 follows:

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